January 30, 2003

Via Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte*: Review of the Unbundling Obligations of Incumbent Local Exchange Carriers--CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996--CC Docket CC No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability--CC Docket No. 98-167

Dear Ms. Dortch:

Attached for filing in the above referenced dockets, please find the Affidavit of Rebecca H. Sommi of Broadview Networks, Inc., and the Affidavit of David Kunde of Eschelon Communications. The purpose of these affidavits is to supplement information provided in a January 24 *ex parte* letter[1] to Mr. William Maher filed by Broadview, Eschelon and several other carriers regarding the need for the Commission to apply any impairment test applicable to competitive transport alternatives on a route by route basis in the *Triennial Review* proceeding.

Respectfully submitted,

/s/
Jeff Oxley, General Counsel of
Eschelon Communications

/s/
Rebecca Sommi, VP Operations
of Broadview Networks

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1 *See* Letter from SNiP LiNK LLC; Broadview Networks, Inc.; Eschelon Telecom, Inc.; KMC Telecom, Inc.; NuVox Inc.; and Xspedius Management Co. LLC to William Maher (Jan. 24, 2003).

cc:

Chairman Powell
Commissioner Martin
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Christopher Libertelli
Daniel Gonzalez
Matthew Brill
Lisa Zaina
Jordan Goldstein
William Maher
Richard Lerner
Scott Bergmann
Michelle Carey
Rob Tanner
Gina Spade
Jeremy Miller
Mike Engel
Aaron Goldberger
Dan Shiman
Qualex International

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

AFFIDAVIT OF REBECCA H. SOMMI

1. My name is Rebecca H. Sommi. I am the Vice President of Operations for Broadview Networks, Inc. ("Broadview"). My business address is 400 Horsham Road, Horsham, Pennsylvania 19044.

2. From 1982 to 1989, I held sales and marketing positions with Bell of Pennsylvania. In 1989, I joined Eastern TeleLogic Communications as Manager of Marketing, and during my tenure my responsibilities expanded to include carrier relations and regulatory responsibilities. In 1993, I was promoted to Director of Regulatory Affairs, with responsibility for negotiating interconnection agreements with Bell Atlantic on behalf of the company following adoption of the Telecom Act of 1996, and participating in 1996 Act proceedings before the Pennsylvania Public Utilities Commission. In 1999, I joined Broadview as Vice-President of Operations Support. My position includes regulatory responsibilities, including carrier relations with Verizon, vendor management, and establishment and monitoring of internal

metrics. In addition, I am directly involved in the selection, negotiation and implementation of vendor facilities for Broadview, including the purchase of interoffice transport.

3. Broadview Networks (www.broadviewnet.com), based in New York City, is a network-based electronically integrated communications provider ("e-ICP") serving small and medium-sized businesses and communications-intensive residential customers in the northeastern and mid-Atlantic United States. Using its own switches and collocated facilities, the company offers integrated communications solutions, including local, long-distance and international voice services, data services, and dial-up and high-speed Internet services using digital subscriber line (DSL) and other advanced technologies.

4. To date, Broadview has deployed four (4) local switches, built over 175 collocation cages, and provisioned over 150,000 lines via UNE-Loops in Verizon's Northeast footprint, which includes the major metropolitan markets of New York City, Boston and Philadelphia. Broadview does not self-provision transport, and relies solely upon either Verizon, or alternate providers of transport, to carry our traffic from our collocation cages to our switches, and for transport for our interconnection network, if available.

5. The purpose of my affidavit is to supplement information provided in a January 24 *ex parte* letter to Mr. William Maher from Broadview and several other carriers regarding[1] the need for the Commission to analyze competitive transport alternatives on a route by route basis in the *Triennial Review* proceeding. In addition, the *January 24 Letter* proposed a modified version of the granularity test submitted by ALTS and CompTel on October 8, 2002, and

[1] See Letter from SNiP LiNK LLC; Broadview Networks, Inc.; Eschelon Telecom, Inc.; KMC Telecom, Inc.; NuVox Inc., and Xspedius Management Co. LLC to William Maher (Jan. 24, 2003) ("*January 24 Letter*").

explained why non-route specific triggers, such as special access pricing flexibility or the number of collocated carriers in a single wire center, should not form the basis of an impairment analysis for unbundled interoffice transport. Specifically, I will describe the problems we've experienced in ordering competitive transport, and will explain why the presence of a competitor is not a comprehensive enough test to determine that impairment does not exist.

6. Since Broadview began building its network in 1999, Broadview has been committed to using competitive providers of transport. In fact, I have personally established relationships with over twenty (20) different carriers. However, even with Broadview's commitment to using alternate providers, we have provisioned only 20% of our DS3 transport needs across 4 vendors.

7. As the *January 24 Letter* explained, the following criteria must be met when considering the purchase of dedicated transport from a competitive transport provider: (1) whether Broadview's need for transport overlaps with the availability of the transport being offered by the competitive transport provider; (2) whether Broadview's point of interconnection ("POI")/switch site is in close proximity to the competitive transport provider's network; (3) whether Broadview can justify, as an economic matter, the cost of using a competitive transport provider that will charge Broadview to extend its facilities to Broadview's POI/switch site; (4) whether Broadview can meet the minimum $15,000 to $50,000 monthly revenue commitment to the competitive transport provider for a three to five year term agreement; and (5) whether Broadview (and Broadview's customers) can "live with" the 90 to 180 day interval required for the competitive provider to complete the build to Broadview's POI/switch site. The build interval is also subject to a number of factors beyond either Broadview's or the competitive transport provider's control. For instance, it is not uncommon to encounter difficulties in gaining

access to rights of way, determining the availability of riser and/or conduits, and meeting building management requirements, to name a few.

8. As the *January 24 Letter* also explained, only after the build is complete can Broadview obtain the DS3 design information in order to place the order with the ILEC for the cross-connect from Broadview's collocation cage to the competitive transport provider's collocation cage. If the distance between the companies' termination frames is in excess of the acceptable electrical standard for DS3's, additional engineering is required. In some instances, the circuit is never provisioned because of this issue. In summary, this is just further proof that the mere presence of an alternate provider is not sufficient standard to determine whether or not impairment exists. In considering whether a CLEC would be impaired without access to unbundled transport, other criteria besides the mere presence of an alternate provider in a central office needs to be considered.

9. As a further example, in our Long Island City, New York location, Broadview worked extensively with two alternate providers to provision DS3 transport to our collocation cages. The initial review of the collocation overlay produced a 75% match with the alternate provider. However, when Broadview placed orders, the carrier was actually able to satisfy only 20% of Broadview's transport needs in the metro New York market. We were unable to obtain services because of distance limitations on the cross-connects between the Broadview cage and the alternate vendor cage, and in other instances the alternate vendor did not have DS3 capacity available for wholesale.

10. The bottom line is that any impairment test the Commission adopts must take the marketplace realities I have described into account. A transport test based on the number of

collocated carriers in an end office does not accurately reflect whether a CLEC is impaired on a given route. Most importantly, a route between end offices might not be impaired, but if a CLEC is unable to obtain alternative transport to its switch site and/or POI, it is clear the CLEC is impaired. There is no "magic number" of collocated carriers which ensures that competitively provided transport is available as a practical, economic or operational matter, and even if transport is available for some routes from that end office, transport will not be available for every route from that office.

11. This concludes my affidavit.

Rebecca H. Sommi

Sworn to and subscribed before
me this 30 th day of January, 2003

Notary Public

My Commission expires: 6-2-2003

HENRY B. KATZ
NOTARY PUBLIC, STATE OF NEW YORK
NEW YORK COUNTY
#02KA5078837
COMMISSION EXPIRES JUNE 2, 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
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Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
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Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

AFFIDAVIT OF DAVID KUNDE

1. I, David Kunde, affirm that the following is my true testimony.

2. I am the Executive Vice President of Network Operations and Engineering for Eschelon Telecom, Inc ("Eschelon") and have been employed here since 1999. From 1994 until joining Eschelon in May 1999, I held the positions of Vice President of Network Engineering and Director of Network Engineering and Operations at Citizens Communications. From 1986 to 1994, I held a variety of positions with Rochester Telephone. I have a BA in Physics and Math from Wittenberg University in Springfield, Ohio and a MBA from the University of Rochester's William E. Simon Graduate School.

3. Eschelon was founded in 1996 and is a rapidly growing provider of integrated voice, data, and Internet services. The company offers a comprehensive line of integrated telecommunications products ranging from telephone systems to advanced voice and high-speed

Internet services. Eschelon employs more than 900 telecommunications/Internet professionals and provides telecommunications services to over 35,000 business customers with over 160,000 total access lines in 12 Tier I and II markets. Eschelon currently offers service in: Denver and Boulder, Colorado; Eugene, Oregon; Minneapolis and St. Paul, Minnesota; Phoenix, Arizona; Portland, Oregon; Reno, Nevada; Salem, Oregon; Salt Lake City, Utah; Seattle, WA and Tacoma, WA.

Unbundled Dedicated Transport

4. The purpose of my affidavit is to supplement information provided in a January 27 *Ex Parte* letter[1] to Mr. William Maher filed by Eschelon and several other carriers regarding the need for the Commission to apply any impairment test applicable to competitive transport alternatives on a route by route basis in the *Triennial Review* proceeding. In addition, the *January 24 Letter* proposed a modified version of the granularity test submitted by ALTS and CompTel on October 8, 2002, and explained why non-route specific triggers, such as special access pricing flexibility, or the number of collocated carriers in a single wire center should not form the basis of an impairment analysis for unbundled interoffice transport.

5. Eschelon commenced business in 1996 as a reseller, however, the company has migrated to a facilities-based model, providing local exchange service through our own switches and collocations in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. While we deploy our own switches and collocation, Eschelon does not self-provision its own transport

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1 *See* Letter from SNiP LiNK LLC, Broadview Networks, Inc., Eschelon Telecom, Inc., KMC Telecom, Inc., NuVox Inc., and Xspedius Management Co. LLC to William Maher (Jan. 27, 2003). ("*January 24 Letter*").

facilities, but instead leases them from the ILEC and alternate providers in those instances where it is possible.

6. Eschelon uses high capacity transport facilities to connect our switches to our collocation sites. To the extent that it would make economic sense, Eschelon would much prefer to build, own and operate all of the facilities involved in serving our customers, including transport. Obviously, the current tumultuous economic climate does not support such investments at this time. However, absent the ability to build all of our own facilities, Eschelon would prefer to use alternative, non-ILEC transport providers, where they are available, however, in the markets we serve, few alternate transport providers are available. In fact, I estimate that less than sixty percent of the Eschelon collocations can be served via alternate transport providers, and less than twenty percent are served by more than one alternative provider.

7. Eschelon operates predominantly in markets in which Qwest is the incumbent carrier and where third party provided dedicated transport is generally not available on a uniform, widespread, cost-effective, and timely basis. As a result, Eschelon is compelled to purchase unbundled dedicated interoffice transport from Qwest in order to provide transport from the Eschelon switch to our collocation sites, as well as transport between Eschelon's collocations.

8. The availability of multiple dedicated transport suppliers is a critical consideration for purposes of network reliability. Eschelon's customers demand that we provide them with uninterrupted service, and doing so requires that our network have dedicated transport available

from at least two different carriers, so that there is network redundancy in case of a failure.[2] However, as the *January 24 Letter* explained, the most common problem we face in obtaining dedicated transport from non-ILEC providers is the lack of alternate facilities on the *entire transport route*. An entirely facilities-based alternatively provided circuit that does not utilize *any* ILEC-supplied elements—referred to as a "Type 1" circuit—is difficult to find in most of the markets Eschelon serves. To the extent Eschelon is able to employ non-ILEC transport in its network, it is commonly "Type 2" circuits, which are simply hybrids of a competitive carrier's service and incumbent LEC special access service.

9. Although the ILECs have claimed that alternative providers of transport are available in markets wherever there is demand, in this proceeding the Commission must examine the marketplace reality that non-ILEC providers of transport are simply not yet available in many areas. In such markets, Eschelon is forced to order two different transport circuits from the same ILEC provider. In fact, despite Eschelon's best efforts to utilize alternate providers, we lack non-ILEC transport options in almost half of our 101 collocations. Accordingly, any rule that would eliminate the ILEC's obligation to provide unbundled transport must specifically inquire as to the availability of alternate transport facilities on a route-by-route basis. Any blanket rule relying upon meaningless triggers would not only thwart the addition of new alternate transport, but would also threaten the availability of alternatives in even those limited areas where it is currently available.

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[2] Transport outages are all too frequent. For example, one of Eschelon's transport links between our Beard-Minneapolis collocation and our downtown Minneapolis switch failed seven times in 2002. We have experienced multiple transport outages in all of our markets. This is not acceptable service from a provider and it is not acceptable to our small business customers. Since the events of 9/11, we should all be much more concerned to build transport diversity into the public switched telephone network.

10. While Eschelon seeks to utilize two different transport providers in each market, our ideal network would rely upon the *same two transport providers in every market and every collocation* because of the inherent difficulties we face in dealing with multiple vendors in multiple markets. Being forced to utilize multiple vendors imposes an additional layer of difficulty onto an already difficult process, and provides even more potential points of failure. Specifically, carriers are forced to negotiate multiple contracts, establish multiple ordering processes, maintain multiple points of contact, utilize multiple repair procedures, and deal with multiple billing systems. Further, utilizing multiple providers, in many instances, precludes Eschelon from being able to negotiate volume discounts with providers,[3] despite the company's attempt to "concentrate" its purchases. It is not technically or economically feasible for Eschelon utilize different transport providers in every market. For example, the availability of an alternate transport provider who offered facilities in our Portland market, for example, but not in any other market, Eschelon would not use that provider for economic and engineering reasons.

11. To the extent the Commission would use this proceeding to relieve Qwest of its obligation to unbundle dedicated transport, Eschelon would have no choice but to purchase it from Qwest's federal private line tariff, which imposes prices that are far greater than the UNE prices Eschelon pays for transport now.[4] In fact, forcing Eschelon to utilize special access

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[3] Eschelon has entered into negotiations with numerous transport providers in its search for transport diversity. In Eschelon's experience, providers of wholesale transport do not offer reasonable, cost-based rates for transport until the purchaser commits to purchasing fifty or more DS3 circuits, the equivalent capacity of 33,600 voice grade lines. Until quite recently, Eschelon's business was not sufficiently large to induce any providers to offer us cost based rates. Recently, Eschelon's business has grown to a scale where we can make commitments to one or two vendors, but no single vendor serves all, or even a high percentage of, our offices.

[4] Qwest's FCC Tariff rates for its transport services are much higher than the rates offered by our alternative transport vendors where the latter offer service. For example, consider the five year term rates for DS3 transport in Colorado on Attachment 1.

12. Eschelon submits that Commission must continue to require ILECs to unbundle dedicated transport. Any impairment test the Commission adopts must take the marketplace realities I have described into account. A transport test based on the number of collocated carriers in an end office does not accurately reflect whether a CLEC is impaired on a given route. The capital market situation makes third party providers of these elements rare, in some cases, less predictable, because many alternate providers companies are struggling to stay in business. At bottom, Eschelon's business will be impaired without continued unbundled access to dedicated transport.

FURTHER AFFIANT SAYETH NOT.

Dated this 29th day of Jan., 2003.

David Kunde

Subscribed and sworn to before me
this 29th day of January, 2003.

Notary Public
My Commission Expires: 1/31/2005

KIM K. WAGNER
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2005

Attachment 1
DS3 Dedicated Transport Rate Comparison for Colorado

		Recurring		
				Qwest
		Vendor A	Vendor B	FCC Tariff Price
0 Mile Circuit		$ 498.37	$ 610.00	$ 1,177.50
10 Mile Circuit		1,020.43	1,010.00	1,792.50
Difference vs Qwest FCC Price				
0 Mile Circuit		$ (679.13)	$ (567.50)	n/a
10 Mile Circuit		(772.08)	(782.50)	n/a
% Difference vs Qwest FCC Price				
0 Mile Circuit		-57.7%	-48.2%	n/a
10 Mile Circuit		-43.1%	-43.7%	n/a
		Non-Recurring		
				Qwest
		Vendor A	Vendor B \1	FCC Tariff Price
0 Mile Circuit		$ 266.32	$ -	$ 642.25
10 Mile Circuit		266.32	-	642.25
Difference vs Qwest FCC Price				
0 Mile Circuit		$ (375.94)	$ (642.25)	n/a
10 Mile Circuit		(375.94)	(642.25)	n/a
% Difference vs Qwest FCC Price				
0 Mile Circuit		-58.5%	-100.0%	n/a
10 Mile Circuit		-58.5%	-100.0%	n/a
\1 Vendor B waives installation charges.				